United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: May 31, 2007

TO : Robert Chester, Regional Director
Region 18

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: United Steel, Paper & Forestry,
Rubber, Manufacturing, Energy, 536-2507
Allied-Industrial & SWIU (Hibbing 536-2570
Joint Venture, Cliffs Mining Company 596-0420
Managing Agent, & Cleveland Cliffs, Inc.)
Case 18-CB-4586

The Region submitted this case for advice about whether the Union's attempts within the Section 10(b) period to enforce a neutrality agreement it entered into with the Employer violate Section 8(b)(1)(A) because of certain assertedly unlawful provisions the agreement contains, or whether the charge is time-barred under Section 10(b) because the parties entered into the neutrality agreement more than six months prior to the charge being filed.

We conclude that the Union's unilateral efforts within the Section 10(b) period to compel the Employer to honor the terms of the neutrality agreement, including filing a federal court lawsuit, do not restrain or coerce employees within the meaning of Section 8(b)(1)(A). Accordingly, the Region should dismiss the charge, absent withdrawal.

The facts of this case are briefly summarized here. Hibbing Joint Venture (the Employer) mines and processes iron ore for sale to other companies. The Employer employs roughly 550 employees at facilities in Michigan and Minnesota. The Union represents a unit of production and maintenance employees at the Employer's Hibbing, Minnesota facility. The parties' most recent collective-bargaining agreement (the Agreement) was executed on August 1, 2004, and is effective by its terms until September 1, 2008. The Agreement includes a neutrality agreement and a Side Letter on Neutrality (collectively, the Neutrality Agreement).

On March 30, 2006,[1] the Union invoked the Neutrality Agreement in order to begin organizing the production and maintenance employees working at the Employer's Northshore facility in Silver Bay, Minnesota. On April 3, the Employer stated that it could not allow an organizing campaign at Northshore due to "legal issues" concerning the Neutrality Agreement.

Subsequently, on October 2, the Union announced that it intended to arbitrate the enforceability of the parties' Neutrality Agreement. On November 3, the Employer responded that it did not believe the "Northshore neutrality issue [was] arbitrable due to illegality."

On December 8, the Union filed a Section 301 suit[2] in Minnesota Federal District Court to compel the Employer to arbitrate the enforceability of the neutrality agreement. In response and also on December 8, the Employer filed the instant unfair labor practice charge,[3] alleging that the Union's attempts to enforce the Neutrality Agreement violate Section 8(b)(1)(A) because of various assertedly unlawful provisions the Neutrality Agreement contains.[4]

ACTION

We conclude that the Union's unilateral efforts within the Section 10(b) period to compel the Employer to honor the Neutrality Agreement, including filing a Section 301 suit, do not restrain or coerce employees within the meaning of Section 8(b)(1)(A). Accordingly, the Region should dismiss the charge, absent withdrawal. If the Union prevails in its Section 301 suit and the Employer contends that any provision of the award is unlawful, it may file another charge at that time.

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[1] All dates are 2006.

[2] Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185.

[3] The Section 10(b) date is therefore June 8.

[4] The charge also alleged the Union's conduct violated Section 8(b)(3), but the Employer failed to support this claim. The Region did not submit this allegation for Advice consideration and intends to dismiss it, absent withdrawal.

Regardless of the legality of the Neutrality Agreement provisions the Employer challenges, the Union's peaceful unilateral invocation of the arbitral and judicial processes does not restrain or coerce employees within the meaning of Section 8(b)(1)(A). Union conduct that reasonably tends to restrain or coerce employees in the exercise of their Section 7 rights violates Section 8(b)(1)(A).[5] Absent employee restraint or coercion, a union lawsuit filed against an employer does not violate Section 8(b)(1)(A).[6]

In Stroehmann Bakeries, the Board held that a lawsuit seeking to impose minority recognition did not restrain or coerce employees under Section 8(b)(1)(A).[7] There, after the union lost an election, it sued the Board and the employer in federal court, claiming the Board had acted outside its statutory authority by failing to require the employer to fulfill its Excelsior obligations.[8] The Board held that the union's lawsuit against the employer did not restrain or coerce employees under Section 8(b)(1)(A) because the lawsuit did not name the employees as defendants and did not seek to impose either a contract or a union-security obligation on them.[9] The Board also noted

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[5] See Bakery, Confectionary & Tobacco Workers' Int'l Union (Stroehmann Bakeries, Inc.), 320 NLRB 133, 138 (1995).

[6] See Slate Workers Local 66 (Sierra Employers Ass'n, Inc.), 267 NLRB 601, 602-603 (1983) (union's state court abuse of process lawsuit against employers' labor consultant who had filed and withdrawn 14 unfair labor practice charges against union during contract negotiations did not violate Section 8(b)(1)(A); employers have no statutorily protected right to file charges, unlike employees, whose right to file charges Section 8(b)(1)(A) protects from union coercion).

[7] 320 NLRB at 138.

[8] Id. at 134-135.

[9] Id. at 138. The suit sought certification of the union and damages from the employer in an amount equal to lost union dues. Cf. Teamsters Local 776 (Rite Aid Corp.), 305 NLRB 832, 834 (1991), enfd. 973 F.2d 230 (3d Cir. 1992), cert. denied 507 U.S. 959 (1993) (union violated Section 8(b)(1)(A) by filing Section 301 suit seeking to force employer to apply a contract containing a union security clause to a group of non-unit employees); and Allied Trades Council (Duane Reade Inc.), 342 NLRB 1010, 1012-1013 (2004) (union restrained and coerced employees in violation of Section 8(b)(1)(A) by insisting through arbitration on

that the lawsuit did not restrain or coerce the employees even though a minority union could have become their exclusive bargaining representative if the union won its suit. The Board reasoned that the union's peaceful invocation of judicial processes was not more coercive than the union's peaceful picketing for minority recognition in Curtis Brothers,[10] which the Supreme Court held did not restrain or coerce employees under Section 8(b)(1)(A).[11]

Here, the Union's lawsuit seeks to compel the Employer to arbitrate the validity of the parties' Neutrality Agreement. We conclude that, under Curtis Brothers and Stroehmanns, the Union's lawsuit does not constitute restraint or coercion within the meaning of Section 8(b)(1)(A) because it neither names the employees as defendants nor seeks to impose a contract or union-security obligation on them. In analyzing whether employees have been restrained or coerced, no logical distinction exists between the unions' unilateral efforts to impose a minority representative, as in Curtis Brothers and Stroehmanns, and the Union's unilateral effort here to enforce the Neutrality Agreement.

As noted above, the Employer filed the charge in this case on December 8, 2006 and, therefore, the Section 10(b) date is June 8, 2006. Because the parties entered into the Neutrality Agreement on August 1, 2004, its formation cannot be attacked.[12] The instant charge should, therefore, be dismissed, absent withdrawal. If the Union prevails in its Section 301 suit and the Employer contends that any provision of the award is unlawful, it may file another charge at that time.

B.J.K.

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application of entire contract, including union-security provisions, to employees Regional Director had concluded were outside the unit).

[10] NLRB v. Teamsters Local 639 (Curtis Bros.), 362 U.S. 274, 290 (1960).

[11] 320 NLRB at 138.

[12] See Machinists Local 1424 v. NLRB (Bryan Manufacturing Co.), 362 U.S. 411 (1960).